IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

OP.No. 32681 of 2001(N)

PETITIONER:

MOHAN GEORGE,
SALES TAX INSPECTOR,
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KASARAGOD.

BY ADV. SRI.V.P.SUKUMAR
SMT.DEEPA. P.R.

RESPONDENTS:
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1. **THE JOINT COMMISSIONER-I,**
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. **THE SECRETARY TO GOVT.,**
TAXES (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 53281/2001 IN OP NO. 32681/2001 N.

DISMISSED

03/07/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS,

EXT.P1. COPY OF THE PROCEEDINGS OF THE LAND BOARD, THIRUVANANTHAPURAM DT. 19/12/72.

EXT.P2. COPY OF THE REPRESENTATION DT. 1/12/95 BY THE MANAGER, SIDDHASRAMAM, MANNOORKKAD BEFORE THE JOINT COMMISSIONER TAXES.

EXT.P3. COPY OF THE REPRESENTATION BY THE MANAGER, SIDDHASRAMAM,BEFORE THE INTELLIGENCE OFFICER.

EXT.P4. COPY OF THE ORDER DT. 28/11/95 BY THE BOARD OF REVENUE, TAXES.

EXT.P5. COPY OF THE MEMO OF CHARGES DT. 16/1/96 TO THE PETITIONER BY THE R1.

EXT.P5A. COPY OF THE STATEMENT OF ALLEGATIONS RECEIVED ALONG WITH EXT. P5 FROM THE R1.

EXT.P6. COPY OF THE OF THE STATEMENT OF DEFENCE DT. 11/3/96 BY THE PETITIONER BEFORE THE R1.

EXT.P7. COPY OF THE ORDER DDT. 30/3/96 BY THE SECRETARY TAXES-I, BOARD OF REVENUE TAXES, THIRUVANANTHAPURAM.

EXT.P8. COPY OF THE ORDER DT. 18/3/96 BY THE R1 APPOINTING THE ENQUIRY OFFICER.

EXT.P9. COPY OF THE ORDER DT. 1/1/99 BY THE R1.

EXT.P10. COPY OF THE APPEAL DT. 19/2/99 FILED BY THE PETITIONER BEFORE THE R2.

EXT.P11. COPY OF THE GO DT. 3/07/2001 BY THE R2.

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Thottathil B. Radhakrishnan, J.

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O.P.No.32681 of 2001

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Dated this the 3rd day of July, 2007.

JUDGMENT

This matter relates to the imposition of penalty on a member of the Kerala Agricultural Income Tax and Sales Tax Subordinate Service. In Ext.P10 appeal, he had specifically contended that he was not given the report of the enquiry officer and that he was denied reasonable opportunity of being heard. In Ext.P11, the Government noticed the stand of the petitioner and recorded that at the time of hearing, he took the stand that he was not given the copy of the enquiry report.

2. The incident that led to the disciplinary proceedings against the petitioner is allegedly a transaction in the check post. It appears that certain goods were moved through the check post. It is stated that the consignee was an Asram, which was the consumer in relation to the goods inasmuch as the goods were brought in for the construction of the building of the Asram. There is some controversy as to the legitimacy

of some of the entries in relation to the two declarations. Petitioner has consistently asserted that the handwriting attributed to him is not really his. It is also his case that the memo of charges did not contain any particular accusation regarding loss to the Government, though during the course of proceedings it appears that the file reflects an apparent loss of around Rs.3,500/- to Rs.4,000/- by way of security, which could have been converted ultimately, either to be tax or to be fine.

3. Having regard to the aforesaid disputed facts, I find that it was inappropriate to conclude the proceedings without giving the petitioner a copy of the enquiry report and giving him an opportunity of being heard on the report. This is more so because the punishment imposed on him is one of barring of two increments with cumulative effect. But, ends of justice would be satisfied if the Government, as the appellate authority, rehears the petitioner by affording him such an opportunity after furnishing him

a copy of the enquiry report and such other materials, which have been used against him in the enquiry. He should be entitled to reasonable opportunity to place his objections to the enquiry report. To secure the aforesaid, the impugned Ext.P11 appellate order of the Government is set aside with a direction that the Government will rehear the petitioner, following what is stated above in this judgment.

In the result, this writ petition is allowed to the above extent, leaving open the other questions.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.32681 of 2001

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JUDGMENT

Dated:3-7-2007